

ORDER

Plaintiff Dennis Faulkner, Trustee of the Reagor-Dykes Auto Group Creditors' Liquidating Trust, filed his motion seeking leave to file an amended complaint—the Second Amended Complaint. The Second Amended Complaint adds an alternative legal theory of recovery under §§ 547 and 548 of the Bankruptcy Code, and under the Texas Uniform Fraudulent Transfer Act (TUFTA). The Trustee also adds a constructive fraudulent transfer claim under § 548(a)(1)(B) and additional transfers that occurred in August 2016. Defendant, FirstCapital Bank of Texas, N.A., opposes the motion.

Upon review of the pleadings and briefs of the parties, the Court, in accordance with *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004), finds as follows:

- The amended complaint may cause delay, but the Trustee has not acted in bad faith or with a dilatory motive. The mere opportunity to bring a claim earlier does not equate to bad faith.
- The Trustee could have previously brought the new claims under §§ 547 and 548 of the Code, as well as the TUFTA claims. While the 33,000 checks may not perfectly match the previously obtained ledgers, the Trustee could have deduced the existence of constructive fraudulent transfers based on the information it already had.
- The addition of the August 2016 transfers are not prejudicial; the issues, such as consideration, are related to the constructive fraudulent transfers alleged in the First Amended Complaint. Any prejudice to FirstCapital is not significant or “undue.”
- The amendments are not futile and state a claim upon which relief can be granted.

On balance, the Court concludes that the Trustee's motion should be granted.

SO ORDERED.

End of Order